

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

July 11, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Oahu

Amend Board Approval of February 8, 2008 (Item D-5) Authorizing Sale of Lease at Public Auction for Commercial Purposes; Authorize Issuance of Revocable Permit to Prudential Locations, LLC., Waikiki, Honolulu, Oahu, Hawaii; Tax Map Key: (1) 2-7-36:04 and 16

REQUEST:

Amend Board approval of February 8, 2008 (Item D-5) authorizing sale of lease for commercial purposes to restrict the permitted uses in the lease to commercial parking only; authorize issuance of a revocable permit to Prudential Locations, LLC.

LEGAL REFERENCE:

Sections 171-6, 13, 14, 16, 17, 35, 36, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended ("HRS").

LOCATION:

Portion of Government lands situated at Waikiki, Honolulu, Oahu, identified by Tax Map Key (1) 2-7-036:04 and 16 and shown on CSF Map No. 24,024 attached to **Exhibit A**.

AREA:

24,407 square feet, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division. The subject property is one legally subdivided lot with separate TMK numbers issued solely for real property tax purposes.

LEASE:

Character Of Use: Commercial parking lot or garage. No ancillary structures or uses shall be permitted.

Lease Term: Fifteen (15) years from the commencement date of the lease

Upset Minimum Annual Base Rent: \$80,000.00

Percentage Rent: Three percent (3.0%) of the lessee's gross annual revenues, if the percentage rent exceeds the annual minimum base rent.

Effective Rental: The greater of the annual minimum base rent or annual percentage rent, if any.

Frequency of Rent Payments: Annual minimum base rent to be paid in semi-annual payments, in advance. Percentage rent, if any, to be paid annually in arrears, no later than sixty (60) days after the close of the lessee's fiscal year; provided, however, that the Chairperson may extend the deadline for payment of percentage rents for good cause.

Quarterly and Annual Reports: Lessee shall submit quarterly reports no later than 30 days after the close of the quarter detailing the gross revenues from uses and operations on the property. Lessee shall also submit an annual report of the gross revenues within sixty (60) days after the close of the Lessee's fiscal year. Lessee shall submit the quarterly and annual reports even if no percentage rent is payable.

Rental Adjustments: The minimum annual base rent shall increase by ten percent (10%) after the initial ten (10) years of the lease term.

Performance Bond: Twice the amount of the annual base rent.

Improvement Bond: Amount of improvements. The Lessee, upon submittal and written approval by the Chairperson of the construction plans for the proposed improvements, shall within sixty (60) days procure and deposit with DLNR a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the proposed improvements.

Unilateral Agreement and Declaration for Conditional Zoning ("UA"): The property is encumbered by and subject to the terms and conditions of that certain Unilateral Agreement and Declaration for Conditional Zoning dated June 1, 2007 and recorded in the State of Hawaii Bureau of Conveyances as Document No. 2007-099010 (the "UA"), a copy of which is attached as **Exhibit A**. The UA was required by the City and County of Honolulu ("City") as a condition to the City's rezoning of the property from the R-5 district to the B-2 district pursuant to Ordinance No. 07-32.

The Lessee shall comply with all such conditions and restrictions imposed by the UA. The Lessee shall also submit to DLNR an annual status report by October 30<sup>th</sup> of each year describing the Lessee's progress towards complying with each condition of the UA, which report may be incorporated into DLNR's annual status report to the City required under UA Condition 5.

Easement over Adjacent Property. The City and County of Honolulu, Department of Planning and Permitting has recommended the lessee make a good faith effort to obtain an easement over the adjacent mauka property (identified by TMK (1) 2-7-036:03) to allow access to the subject property from the existing signalized Kapahulu/Campbell Avenue intersection. The successful bidder shall make such efforts to obtain an easement over the adjacent property and provide a written report to DLNR detailing such efforts and the results of such efforts. The report shall be submitted to DLNR within thirty

(30) days of the auction, and DLNR may request further reports updating the successful bidder's efforts to obtain an easement.

Commencement Date: The commencement date shall be thirty (30) days after the date of the public auction, provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

REVOCABLE PERMIT:

Character Of Use: Commercial parking lot or garage. No ancillary structures or uses shall be permitted.

Monthly Rent: \$6,667.00

REMARKS:

On February 8, 2008, the Board approved the sale of a commercial ground lease by public auction. The Board's approval authorized DLNR to offer a 65-year commercial ground lease by public auction with a minimum upset annual lease rent of \$180,000. The lease revenues would be deposited into DLNR's Special Land and Development Fund and used to fund DLNR's operations and other public programs Statewide.

However, nearby businesses and residents in Kapahulu and area legislators believe the property should only be used as a public parking lot because these businesses and residences either do not have their own parking or have inadequate parking. Accordingly, this submittal contains a proposal for consideration by the Board, under which the Board's previous approval would be amended to restrict the use of the property to a commercial parking lot, reduce the upset annual rent at the public auction to \$80,000, and reduce the term of the lease from 65 to 15 years.<sup>1</sup>

The upset annual rent of \$80,000 was provided by Prudential Locations, LLC ("Prudential"), the landowner of adjacent TMK parcel 3, who has also agreed to bid at the auction if such a lease is offered. If Prudential is the successful bidder, it intends to operate a commercial parking lot on the site through a private commercial parking operator and also seek financial subsidies from certain area businesses to support the lease rent payment. According to Prudential, a commercial parking lot operator may be willing to participate in the auction if it were to also receive appropriate financial subsidies.

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<sup>1</sup> This proposal shall not be construed as a determination or recommendation that: (a) the continued use of the property as a parking lot will be an appropriate use upon expiration of the 15-year lease; (b) the proposed \$80,000 upset lease rent represents a fair market return to the State; (c) the use of public lands to subsidize the parking needs of certain private commercial and residential landowners/lessees best serves the interests of the State as a whole and its beneficiaries; or (d) DLNR shall be required to provide public lands, forego income to the State, or use public funds to acquire private lands, to ensure the parking needs of other private commercial or residential landowners throughout the State are met.

With respect to the proposed revocable permit, Land Division has received complaints and/or reports of unauthorized and illegal activities on the property, including loitering, homeless camps, drinking, and alleged drug dealing. Staff recommends issuance of a revocable permit to Prudential for the interim period until a long-term lease is issued. The revocable permit will allow Prudential to use or operate a commercial parking lot on the property during the interim period and require that Prudential maintain the property, obtain insurance over the property, and pay monthly rent to DLNR. It is the intent that the revocable permit be terminated upon issuance of the proposed long term ground lease or if the public auction does not result in a qualified lessee.

PROPOSAL: The following proposal is submitted for the Board's reconsideration and approval:

1. That the Board amend its prior approval of February 8, 2008 (Item D-5) to: (i) limit the permitted uses in the lease to a commercial parking lot or garage only; and (ii) amend and replace the previously approved lease terms and conditions with the lease terms and conditions stated above, which are by this reference incorporated herein, and further subject to the following:
  - a. The standard terms and conditions of the most current business/commercial general lease form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. That if the public auction of a lease for commercial parking does not result in a qualified lessee, the Board authorize the sale of a lease by public auction for any business or commercial purposes under the terms and conditions approved by the Board in its February 8, 2008 approval of Item D-5.
3. That the Board authorize issuance of a revocable permit to Prudential Locations, LLC under the terms and conditions set forth above and by this reference incorporated herein, and further subject to the following.
  - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted by Land Division staff

APPROVED FOR SUBMITTAL:

  
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LAURA H. THIELEN, Chairperson

## EXHIBIT A

made a part hereof (the "Land"), and desire to make the Land subject to this Unilateral Agreement; and

WHEREAS, the City Council ("Council") of the City and County of Honolulu ("City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, related to conditional zoning, is considering a change in zoning under the LUO of the Land from R-5 Residential District to B-2 Community Business District with a 40-foot height limit (the "zone change"); and

WHEREAS, a public hearing regarding the zone change, Bill 1 (2007), was held by the Council on January 21, 2007; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 223 that said zone change be approved, subject to the following conditions contained in this Unilateral Agreement to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the zone change (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. **Revised Traffic Impact Analysis Report (TIAR).** Prior to building permit approval a revised Traffic Impact Analysis Report (TIAR) shall be submitted to and approved by the City Department of Transportation Services and the City Department of Planning and Permitting. Both departments should be consulted regarding the scope of the TIAR. The TIAR shall discuss the result of discussions with the owner of the adjacent Prudential Locations property to secure an access easement.
2. **Disclosure.** The Declarant shall inform all prospective purchasers or lessees of the Land of all of the following:
  - a. The Land is subject to possible errant golf balls from the Ala Wai Golf Course. Design of the development of the Land should account for the possibility of such errant golf balls.
  - b. Mowing and maintenance of the Ala Wai Golf Course may result in noise and other impacts.
3. **Mature Trees.** At the time of the submittal of the Diamond Head Special District permit application or prior to tree removal, clearing, and/or grubbing, whichever occurs first, the Declarant shall submit to the Department of Planning and Permitting for approval a map showing all existing trees having a

trunk diameter greater than six inches, their species, canopy spread, and tree height.

**4. Compliance with Other Governmental Requirements.**

The Declarant shall be responsible for ensuring that the final plans for the proposed development of the Land shall comply with all applicable Land Use Ordinance and other governmental agencies' provisions and requirements.

**5. Annual Reports.** On an annual basis, the Declarant

shall submit a written status report to the Department of Planning and Permitting documenting its satisfaction of and/or describing its progress toward complying with each condition of this Unilateral Agreement. The status report will be submitted by December 31 of each year until such time as the Department of Planning and Permitting has determined that all conditions of this Unilateral Agreement have been satisfied. If a status report is not submitted within the time specified, the Department may defer the processing of permits until a status report is submitted.

**6. Noncompliance with Conditions.** In the event of

noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may institute action to rezone the Land, seek civil enforcement, or take appropriate action to terminate or stop the development of the Land until applicable conditions are met. Failure to fulfill any conditions of this Unilateral Agreement may be grounds for revocation of the permits issued under this zoning and grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested zone change and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set

forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

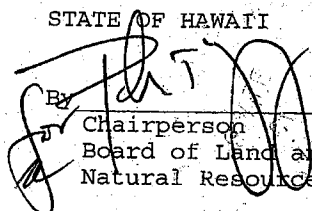
That if there are any conflicts between this Unilateral Agreement and any applicable public land laws or statutes, the provisions of the public land laws or statutes shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Unilateral Agreement shall run with the land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City shall have the right to enforce this Unilateral Agreement by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Unilateral Agreement, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and executed this Unilateral Agreement and Declaration for Conditional Zoning on the day, month and year first above written.


STATE OF HAWAII

Approved by the Board  
of Land and Natural  
Resources at its meeting  
held on March 9, 2007.

By   
Chairperson  
Board of Land and  
Natural Resources

Declarant

APPROVED AS TO FORM:

  
Deputy Attorney General  
Dated: 6/1/07





**STATE OF HAWAII**

**SURVEY DIVISION**

**DEPT. OF ACCOUNTING AND GENERAL SERVICES  
HONOLULU**

C.S.F. No. 24,024

April 29, 2005

**COMMERCIAL LEASE SITE**

**Waikiki, Honolulu, Oahu, Hawaii**

Being a portion of Royal Patent 4889, Land Commission Award 35, Fort Land, Apana 2 to Mahuka conveyed to the Territory of Hawaii by Trustees under the Will and of the Estate of Bernice Pauahi Bishop, deceased, by deed dated June 14, 1921 and recorded in Liber 605, Page 20 (Land Office Deed 2033).

Beginning at the northeast corner of this parcel of land, at the southeast corner of Lot A as shown on Map 2 of Land Court Application 1542 and on the northwest side of Kapahulu Avenue, the coordinates of said point of beginning referred to Government Survey Triangulation Station "DIAMOND HEAD 2" being 6669.17 feet North and 781.07 feet West, thence running by azimuths measured clockwise from True South:-

1. Along the northwest side of Kapahulu Avenue on a curve to the right with a radius of 490.00 feet, the chord azimuth and distance being:  
20° 32' 44" 149.16 feet;

*Exhibit A-*

C.S.F. No. 24,024

April 29, 2005

2. 29° 18' 98.00 feet along the northwest side of Kapahulu Avenue;
3. 119° 18' 110.00 feet along Diamond Head Booster Station, Governor's Executive Order 2569;
4. 209° 18' 211.44 feet along Ala Wai Golf Course and Park Site, Governor's Executive Order 3885;
5. 278° 02' 30" 93.68 feet along Ala Wai Golf Course and Park Site, Governor's Executive Order 3885 and Lot A as shown on Map 2 of Land Court Application 1542 to the point of beginning and containing an AREA OF 24,407 SQUARE FEET.

SURVEY DIVISION  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
STATE OF HAWAII

By: 

Reid K. Siarot  
Land Surveyor

gm

Compiled from CSFs 23162,  
23218 and other Govt. Survey  
Records.

